

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,787

)

Appeal of )

)

INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare that she was overpaid Food Stamp benefits as a result of her failure to provide information regarding her employment to the Department.

FINDINGS OF FACT

1. The petitioner is a fifty-nine-year-old woman who works to support herself and her disabled husband. She and her husband have received Food Stamps through the Department of Social Welfare since 1990.
2. On October 25, 1994, the petitioner began to work as a department head and cashier at a variety store. She obtained this job in response to difficulties obtaining Medicaid and fuel assistance for herself and her husband. She made \$72 in October of 1994, and \$725 in November of 1994.
3. Because the Department was unaware of her earnings, she continued to receive Food Stamps after she began working in amounts to which she was not entitled. The petitioner does not disagree with the figures used by the Department to determine her income for the time at issue and did not argue that the \$294 overpayment figure was incorrect. She does disagree that the overpayment occurred because she failed to report income. No evidence was put forward by the Department as to which month was determined to be the initial month of overissuance or how that month was determined because the petitioner did not disagree with the figures.
4. The petitioner's testimony was that she informed the Department on October 22 or 23, 1994, that she was going to work soon because of the couple's lack of money and their frustration in getting help with her husband's prescriptions through the Department's medical programs. That same day she applied for a job and was hired. On October 26, 1994, the petitioner claims she mailed a letter to the Department informing them of that fact. At the hearing she produced what she represented was a handwritten copy

of that letter. In that letter she informed the Department that she was compelled to return to work due to her husband's inability to qualify for Medicaid and that her new job at the variety store was on a trial basis for thirty days. She concluded by saying that she would send her pay receipts in as soon as she could. The petitioner testified that she believed she had to send three pay stubs based on some advice she got from a neighbor.

5. The petitioner further testified that she did send the three paystubs in on November 13, 1995, accompanied by a cover letter inviting the Department to call her if they had any questions. A handwritten copy of that letter and the paystubs was also offered by the petitioner.

6. The petitioner's eligibility specialist testified that she never received any letters or paystubs from the petitioner and that she discovered that she was working through a Department of Employment Security tape match on December 1, 1994. The eligibility specialist had no contact with the petitioner from the end of October 1994 through May of 1995. She did not explain why the petitioner was not notified until late June of 1995 that there was a problem with her case. The eligibility specialist handles 650 cases in a month. She does recall the petitioner coming in to the office in October of 1994, to get some prescriptions filled for her husband and recalls that she was angry that she could not get help through Medicaid or General Assistance. She also recalls that the petitioner made statements that she was going to get a job but did not interpret those statements as meaning that she had a job.

7. The petitioner also testified that she sent a third letter to her worker on February 19, 1995, stating that her hours had been cut "in the event this makes a difference in our assistance." That letter was accompanied by four paystubs. A handwritten copy of the letter and copies of the paystubs were also offered into evidence by the petitioner.

8. The petitioner stated that she mailed every letter that she had written and that none had been returned from the post office. They were each addressed to the DSW office on Pearl Street as that address appeared on the monthly envelopes received by the petitioner. Between October 25, 1994 and June 9, 1995, the petitioner had no communications from or meetings with her caseworker.

9. On June 9, 1995, the Department mailed the petitioner a notice that her Food Stamps would be terminated because the household's income had increased. (That decision which is not the subject of this appeal.) On June 28, 1995, the petitioner was notified that she had been overpaid \$294 Food Stamps from December 1, 1994 to June 30, 1995, because the Department did not receive correct, complete or timely information about her income. She was advised that she would have to repay those amounts.

10. The petitioner tried to call her worker within a day or two of receiving the June 28 notice. The worker was not in on July 3 nor July 6 when the petitioner called. She was also unable to reach her on July 7. She finally connected on July 11 and made an appointment to see her that afternoon.

11. At the appointment on July 11, the petitioner asked her worker if she had gotten the three letters and paystubs which were sent to her. The worker replied that they were not in files. The petitioner tried to show the worker the copies she had made of the letters but the worker refused to look at or take them because they were handwritten and would "serve no purpose."

12. It was the worker's testimony that mail comes into the district office and is then distributed by the office manager to the proper person. Although mail may occasionally be misplaced she says that no mail is ever lost forever. She finds it unlikely that three letters mailed by one recipient would fail to reach her.

However, she also agreed that the petitioner appeared to understand reporting requirements and had never had any trouble of this type in the prior four years. She had no reason to think the petitioner was a dishonest person.

13. The testimony of the petitioner that she sent the three letters to the Department along with the paystubs is found to be entirely credible based upon the straightforward demeanor of the petitioner, the content and detail in the copies of the letters, her history of honesty with the Department and in the clarity and consistency of her testimony.

14. The testimony of the worker that she did not get the letters and paystubs is also found to be credible. However, the worker's testimony that mail does not get lost in a government office which handles thousands of cases defies reason and common experience. Even if no piece of mail were ever lost, that evidence would not compel a finding that the petitioner lied about having sent the information to the Department. Although it is less likely that three pieces of mail would be lost, it is not impossible that the petitioner's mail was consistently routed to the wrong place.

15. Based on the above evidence it is found that the petitioner correctly addressed and mailed three notices to the Department detailing her new work situation and that the latter two notices were accompanied by copies of paystubs. The evidence does not support a finding that the petitioner failed in her duty to timely report her earnings. That being so, it must be concluded that the letters were lost after they were mailed and that the blame for such loss is either on the post office or someone in the local district welfare office, but certainly not on the petitioner.

### ORDER

The Department's decision finding that the petitioner was overpaid is affirmed but the matter should be remanded to calculate the initial month of overissuance with regard to rules for failure by the State to act on a reported change found at F.S.M. § 273.18(c)(1)(B).

### REASONS

Although the evidence supports the petitioner's contention that she did notify the Department of her changes in income, the Food Stamp regulations require the Department to establish a claim against her household for overpaid amounts even if the overpayment was due to administrative error on its part. F.S.M. 273.18(b). The regulations specifically contemplate that claims will be made against households even if an overissuance occurred because "a state agency failed to take prompt action on a change reported by a household." F.S.M. 273.18(b)(2)(i).

The regulations do, however, require a different method of calculating the amount of the overpayment based on the type of error:

#### 1. Inadvertent Household and Administrative Error

i For each month that a household received an overissuance due to an inadvertent household or administrative error, the State agency shall determine the correct amount of Food Stamp benefits the household was entitled to receive. The amount of the inadvertent household or administrative error claim shall be calculated based, at a minimum, on the amount of overissuance which occurred during the 12 months preceding the date the overissuance was discovered . . . .

In cases involving reported changes, the State agency shall determine the month the overissuance initially occurred as follows:

A. If, due to an inadvertent error on the part of the household, the household failed to report a change in its circumstances within the required timeframes, the first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been timely reported. However, in no event shall the State agency determine as the first month the change would have been effective any month later than two months from the month in which the change in household circumstances occurred.

B. If the household timely reported a change, but the State agency did not act on the change within the required timeframes, the first month affected by the State's failure to act shall be the first month the State agency would have made the change effective had it timely acted. However, in no event shall the State agency determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred. If a notice of adverse action was required but was not provided, the State agency shall assume for the purpose of calculating the claim that the maximum advance notice period as provided in Sec. 273.13(a)(1) would have expired without the household requesting a fair hearing.

F.S.M. 273.18(c)

No evidence was offered by the Department as to how the overpayment was calculated as the petitioner who appeared pro se did not dispute the amounts arrived at by the Department. Presumably, the first method listed in (A) above was used since the Department was treating this as a household error. As the facts show that it was not the petitioner's error, the methodology set out in paragraph (B) should have been used. It is possible that use of the second method may not make a difference in calculating the amount that was overpaid. However, in fairness to the petitioner, the amount of the overpayment should be recalculated in accordance with paragraph (B) to see if the overpayment amount should be lowered. If the petitioner is dissatisfied with that recalculation she can appeal it.

The petitioner should be aware that rules governing collection of established overpayment claims based on administrative error are different from the rules governing collection of claims based on household error. Once the amount of the overpayment is correctly established, she will receive a demand letter from the Department regarding how this matter may be repaid. She is urged to discuss that letter with her worker and to obtain copies of the regulations regarding collection of claims (F.S.M. 273.18(d)), if she should so desire. If she disagrees with methods employed by the Department to collect on the claim she can again appeal that action.

###